

AMENDED IN ASSEMBLY AUGUST 22, 2014

AMENDED IN ASSEMBLY JUNE 11, 2014

AMENDED IN SENATE JANUARY 27, 2014

SENATE BILL

No. 210

Introduced by Senator Hancock

February 11, 2013

An act to amend Sections 1275 and 1318.1 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 210, as amended, Hancock. Criminal procedure: pretrial release.

(1) Existing law requires a judge or magistrate, in setting, reducing, or denying bail, to take into consideration the protection of the public, the seriousness of the offense, the defendant's previous criminal record, and the probability of the defendant appearing at trial or a hearing.

This bill would revise the factors that the judge or magistrate would be required to consider to, among other things, require the judge or magistrate to consider the history and ~~characteristics~~ *circumstances* of the defendant, and to consider the nature and circumstances of the offense. The bill would require a judge or magistrate to also consider those factors when determining conditions for pretrial release.

(2) Existing law authorizes a court, with the concurrence of the county board of supervisors, to employ an investigative staff for the purpose of recommending whether a defendant should be released on his or her own recognizance. In cases involving certain crimes, including violent felonies, an investigative report is required to be prepared that includes specified information, including outstanding warrants against the

defendant and prior incidents where the defendant has failed to make a court appearance.

This bill would also authorize a sheriff, county probation department, or other local governmental agency, with the concurrence of the board of supervisors, to employ an investigative staff for those purposes, and would require a pretrial investigative report to be prepared before a court may order a defendant released on his or her own recognizance in any case involving specified crimes, including a violent felony. The bill would authorize the preparation of a pretrial investigation report in all other cases in which a court, sheriff, county probation department, or other local governmental agency has employed an investigative staff to recommend whether the defendant should be released on his or her own recognizance. The bill would require any pretrial investigative report to include the results of an evidence-based pretrial risk assessment, as defined, evaluating the defendant's probability of appearing at trial and potential risk to public safety. The bill would prohibit, for purposes of preparing the report, a defendant from being interviewed about the facts and circumstances of the defendant's current offense. The bill would authorize a court, sheriff, county probation department, or other local governmental agency, with the concurrence of the board of supervisors, to employ supervision staff to monitor a defendant's compliance with release conditions ordered by the court, as specified.

~~(3) Existing constitutional provisions require that a statute that limits the right of access to meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by that limitation and the need for protecting that interest.~~

~~This bill would make legislative findings and declarations relating to, among other things, the necessity of treating pretrial investigation reports as confidential in order for pretrial programs to function properly.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Pretrial custody reform is urgently needed in California,
- 4 where the pretrial population far exceeds the national average of

1 ~~61 percent. More than 71 percent of the 71,000 Californians held~~
2 ~~in county jails statewide on any given day are awaiting trial~~
3 ~~approximately 63 percent of the 82,000 Californians held in county~~
4 ~~jails statewide on any given day are awaiting trial.~~

5 (b) Pretrial custody reform will support the implementation of
6 public safety realignment by providing counties greater flexibility
7 in managing their pretrial populations using best practices
8 developed over many years across many jurisdictions.

9 (c) Pretrial services programs have been successfully
10 implemented in many jurisdictions, and have helped to reduce the
11 pretrial jail populations, save money, reduce recidivism, and protect
12 the public.

13 (d) Increasing the use of evidence-based practices in pretrial
14 population management programs will allow better empirical
15 analysis in pretrial decisions, and will help to ensure that the court's
16 decision to order release, conditions of release, and bail is based
17 on a credible assessment of the defendant's risk to public safety
18 and the likelihood of appearance as required.

19 ~~(e) In order for pretrial programs to function properly and to~~
20 ~~protect the rights of persons submitting sensitive information, it~~
21 ~~is essential to treat pretrial investigation reports as confidential so~~
22 ~~the reports are used only for release, bail, and monitoring~~
23 ~~considerations.~~

24 SEC. 2. Section 1275 of the Penal Code is amended to read:

25 1275. (a) (1) In determining conditions for pretrial release,
26 and in setting, reducing, or denying bail, a judge or magistrate
27 shall, on the available information, take into consideration the
28 protection of the public, the nature and circumstances of the offense
29 charged, the history and ~~characteristics~~ *circumstances* of the
30 defendant, the previous criminal record of the defendant, including
31 whether the defendant was, at the time of arrest for the charged
32 offense, on probation, parole, or other form of release pending
33 trial, sentencing, or appeal, and the probability of his or her
34 appearing at trial or hearing of the case, including the defendant's
35 record of appearance at past court hearings or of flight to avoid
36 arrest or prosecution. Public safety and the safety of the victim
37 shall be the primary consideration. In setting bail, a judge or
38 magistrate may consider factors such as the information included
39 in a report prepared in accordance with Section 1318.1.

1 (2) In considering the nature and circumstances of the offense
2 charged, a judge or magistrate shall include consideration of the
3 alleged injury to the victim, and alleged threats to the victim or a
4 witness to the crime charged, the alleged use of a firearm or other
5 deadly weapon in the commission of the crime charged, and the
6 alleged use or possession of controlled substances by the defendant.

7 (3) In considering the history, ~~characteristics~~ *circumstances*,
8 and previous criminal record of the defendant, the judge or
9 magistrate may consider the results of an evidence-based pretrial
10 risk assessment instrument that is predictive of the defendant's
11 risk to public safety and the probability of him or her failing to
12 appear at court hearings.

13 (b) In considering offenses wherein a violation of Chapter 6
14 (commencing with Section 11350) of Division 10 of the Health
15 and Safety Code is alleged, a judge or magistrate shall consider
16 the following: (1) the alleged amounts of controlled substances
17 involved in the commission of the offense, and (2) whether the
18 defendant is currently released on bail for an alleged violation of
19 Chapter 6 (commencing with Section 11350) of Division 10 of the
20 Health and Safety Code.

21 (c) Before a court reduces bail to below the amount established
22 by the bail schedule approved for the county, in accordance with
23 subdivisions (b) and (c) of Section 1269b, for a person charged
24 with a serious felony, as defined in subdivision (c) of Section
25 1192.7, or a violent felony, as defined in subdivision (c) of Section
26 667.5, the court shall make a finding of unusual circumstances and
27 shall set forth those facts on the record. For purposes of this
28 subdivision, "unusual circumstances" does not include the fact
29 that the defendant has made all prior court appearances or has not
30 committed any new offenses.

31 SEC. 3. Section 1318.1 of the Penal Code is amended to read:

32 1318.1. (a) A court, sheriff, county probation department, or
33 other local governmental agency, with the concurrence of the board
34 of supervisors, may employ an investigative staff for the purpose
35 of recommending whether a defendant should be released on his
36 or her own recognizance.

37 (b) (1) Whenever a court, sheriff, county probation department,
38 or other local governmental agency has employed an investigative
39 staff pursuant to subdivision (a), before a court may order a
40 defendant released on his or her own recognizance in any case

1 involving a violent felony, as described in subdivision (c) of
2 Section 667.5, or a felony in violation of subdivision (a) of Section
3 23153 of the Vehicle Code, a pretrial investigative report shall be
4 prepared recommending whether the defendant should be released
5 on his or her own recognizance. The report shall include all of the
6 following:

7 (A) Written verification of any outstanding warrants against the
8 defendant.

9 (B) Written verification of any prior incidents where the
10 defendant has failed to make a court appearance.

11 (C) Written verification of the criminal record of the defendant.

12 (D) Written verification of the residence of the defendant during
13 the past year.

14 (2) After the report is certified pursuant to this subdivision, it
15 shall be submitted to the court for review, prior to a hearing held
16 pursuant to Section 1319.

17 (c) Whenever a court, sheriff, county probation department, or
18 other local governmental agency has employed an investigative
19 staff pursuant to subdivision (a), a pretrial investigation report may
20 be prepared in any case not involving a violent felony, as described
21 in subdivision (c) of Section 667.5, or a felony in violation of
22 subdivision (a) of Section 23153 of the Vehicle Code,
23 recommending whether the defendant should be released on his
24 or her own recognizance. Only one agency authorized pursuant to
25 subdivision (a) shall issue a pretrial investigation report.

26 (d) Any report prepared pursuant to subdivision (b) or (c) shall
27 include all of the results of an evidence-based pretrial risk
28 assessment evaluating the defendant's probability of appearing at
29 trial and potential risk to public safety. "Evidence-based pretrial
30 risk assessment" is the objective, standardized analysis of
31 information about a pretrial defendant in a way that is consistent
32 with and guided by the best available scientific evidence and
33 professional knowledge that measures the defendant's probability
34 of appearing at trial and the potential risk to public safety while
35 pending case disposition.

36 (e) In preparing the report pursuant to subdivision (b) or (c),
37 the defendant shall not be interviewed about the facts and
38 circumstances of the current offense, and any information that a
39 defendant may provide shall not be included in the report. Any
40 information provided by the defendant shall be used solely for the

1 purposes of determining whether the defendant should be released
2 on his or her own recognizance or in setting the conditions of the
3 defendant’s release or modifying a prior release order. The reports
4 may be filed as part of the case record.

5 (f) A court, sheriff, county probation department, or other local
6 governmental agency may, with the concurrence of the board of
7 supervisors, employ supervision staff to monitor the defendant’s
8 compliance with the release conditions ordered by the court.
9 Supervision staff may do any of the following:

- 10 (1) Notify the defendant of court appearance obligations.
- 11 (2) Require the defendant to report periodically by mail,
12 telephone, or personal appearance to verify compliance with release
13 conditions.
- 14 (3) Monitor and assist the defendant with complying with
15 release conditions.
- 16 (4) Supervise a defendant placed on home detention, with or
17 without electronic monitoring, as a condition of release.
- 18 (5) Promptly report violations of release conditions to the court.
- 19 (6) Provide information to assist any law enforcement officer
20 with detaining a defendant supervised pursuant to this section and
21 for whom a bench warrant has been issued.
- 22 (g) The salaries of the staff are a proper charge against the
23 county.